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8 **BEFORE THE**
9 **BOARD OF REGISTERED NURSING**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Statement of Issues
13 Against:

14 **BREANNA MARIE LAMANCE**

15 Respondent.

Case No. 2012-460

DEFAULT DECISION AND ORDER

[Gov. Code, § 11520]

16 **FINDINGS OF FACT**

17 1. On or about February 21, 2012, Complainant Louise R. Bailey, M.Ed., RN, in her
18 official capacity as the Interim Executive Officer of the Board of Registered Nursing, Department
19 of Consumer Affairs, filed Statement of Issues No. 2012-460 against Breanna Marie LaMance
(Respondent) before the Board of Registered Nursing.

20 2. On a date uncertain in July of 2011, Respondent filed an application dated July 28,
21 2011, with the Board of Registered Nursing to obtain a Registered Nurse License.

22 3. On or about November 21, 2011, the Board issued a letter denying Respondent's
23 application for a Registered Nurse License. On or about November 23, 2011, Respondent
24 appealed the Board's denial of her application and requested a hearing.

25 4. On or about February 27, 2012, Tracy Cortez, an employee of the Department of
26 Justice, served by Certified and First Class Mail a copy of the Statement of Issues No. 2012-460,
27 Statement to Respondent, Request for Discovery, Government Code sections 11507.5, 11507.6,
28 and 11507.7, and Notice from Respondent/Applicant to Respondent's address on the application

1 form, which was and is 224 S. Clovis Avenue, Apt. 139, Fresno, CA 93727. A copy of the
2 Statement of Issues is attached as exhibit A, and is incorporated herein by reference.

3 5. Service of the Statement of Issues was effective as a matter of law under the
4 provisions of Government Code section 11505, subdivision (c)

5 6. On or about November 23, 2011, Respondent appealed the denial of her application
6 and requested a hearing in this action.

7 7. On or about May 7, 2012, Respondent submitted her Notice of Withdrawal of
8 Request for Hearing.

9 8. Business and Professions Code section 118 states, in pertinent part:

10 (a) The withdrawal of an application for a license after it has been filed with a
11 board in the department shall not, unless the board has consented in writing to such
12 withdrawal, deprive the board of its authority to institute or continue a proceeding
13 against the applicant for the denial of the license upon any ground provided by law or
14 to enter an order denying the license upon any such ground.

15 9. California Government Code section 11520 states, in pertinent part:

16 (a) If the respondent either fails to file a notice of defense or to appear at the
17 hearing, the agency may take action based upon the respondent's express admissions
18 or upon other evidence and affidavits may be used as evidence without any notice to
19 respondent; and where the burden of proof is on the respondent to establish that the
20 respondent is entitled to the agency action sought, the agency may act without taking
21 evidence.

22 10. Pursuant to its authority under Government Code section 11520, the Board finds
23 Respondent is in default. The Board will take action without further hearing and, based on
24 evidence on file herein, finds that the allegations, in Statement of Issues No. 2012-460 are true.

25 DETERMINATION OF ISSUES

26 1. Based on the foregoing findings of fact, Respondent Breanna Marie LaMance has
27 subjected her application for a Registered Nurse License to denial.

28 2. Service of Statement of Issues No. 2012-460 and related documents was proper and
in accordance with the law.

3. The agency has jurisdiction to adjudicate this case by default.

4. The Board of Registered Nursing is authorized to deny Respondent's application for
licensure based upon the following violations alleged in the Statement of Issues:

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- a. Bus. & Prof. Code Section 2761 – Criminal Convictions
- b. Bus. & Prof. Code Sections 2761/2762(b) – Use of Alcoholic Beverages to an Extent or in a Manner Dangerous or Injurious to Oneself, Others and the Public
- c. Bus. & Prof. Code Sections 2761/2762(c) – Criminal Convictions Related to the Consumption of Alcoholic Beverages

BEFORE THE
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Statement of Issues
Against:

BREANNA MARIE LAMANCE

Respondent.

Case No. 2012-460

DECISION AND ORDER

IT IS SO ORDERED that the application for Registered Nurse License, filed by Respondent Breanna Marie LaMance, is denied.

Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a written motion requesting that the Decision be vacated and stating the grounds relied on within seven (7) days after service of the Decision on Respondent. The agency in its discretion may vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

This Decision shall become effective on OCTOBER 12, 2012.

It is so ORDERED SEPTEMBER 14, 2012

Raymond Thall

FOR THE BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS

Attachment:

Exhibit A: Statement of Issues No. 2012-460

Exhibit A

Statement of Issues No. 2012-460

1 KAMALA D. HARRIS
Attorney General of California
2 ARTHUR D. TAGGART
Supervising Deputy Attorney General
3 KAREN R. DENVER
Deputy Attorney General
4 State Bar No. 197268
1300 I Street, Suite 125
5 P.O. Box 944255
Sacramento, CA 94244-2550
6 Telephone: (916) 324-5333
Facsimile: (916) 327-8643
7 *Attorneys for Complainant*

8 **BEFORE THE**
9 **BOARD OF REGISTERED NURSING**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Statement of Issues Against:

Case No.

2012-460

13 **BREANNA MARIE LAMANCE**
224 S. Clovis Avenue, Apt. 139
14 **Fresno, CA 93727**

STATEMENT OF ISSUES

Respondent.

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16 Complainant alleges:

17 **PARTIES**

18 1. Louise R. Bailey, M.Ed., RN ("Complainant") brings this Accusation solely in her
19 official capacity as the Interim Executive Officer of the Board of Registered Nursing ("Board"),
20 Department of Consumer Affairs.

21 2. In or about July 2011, the Board received an application for a registered nurse license
22 from Breanna Marie LaMance ("Respondent"). On or about July 28, 2011, Respondent certified
23 under penalty of perjury to the truthfulness of all statements, answers, and representations in the
24 application. The Board denied the application on November 21, 2011.

25 **STATUTORY PROVISIONS**

26 3. Business and Professions Code ("Code") section 2736 provides, in pertinent part, that
27 the Board may deny a license when it finds that the applicant has committed any acts constituting
28 grounds for denial of licensure under section 480 of that Code.

1 4. Code section 2761 states, in pertinent part:

2 The board may take disciplinary action against a certified or licensed
3 nurse or deny an application for a certificate or license for any of the following:

4 (a) Unprofessional conduct . . .

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6 (f) Conviction of a felony or of any offense substantially related to the
7 qualifications, functions, and duties of a registered nurse, in which event the record of
8 the conviction shall be conclusive evidence thereof . . .

9 5. Code section 2762 states, in pertinent part:

10 In addition to other acts constituting unprofessional conduct within the
11 meaning of this chapter [the Nursing Practice Act], it is unprofessional conduct for a
12 person licensed under this chapter to do any of the following:

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14 (b) Use any controlled substance as defined in Division 10 (commencing
15 with Section 11000) of the Health and Safety Code, or any dangerous drug or
16 dangerous device as defined in Section 4022, or alcoholic beverages, to an extent or
17 in a manner dangerous or injurious to himself or herself, any other person, or the
18 public or to the extent that such use impairs his or her ability to conduct with safety to
19 the public the practice authorized by his or her license.

20 (c) Be convicted of a criminal offense involving the prescription,
21 consumption, or self administration of any of the substances described in subdivisions
22 (a) and (b) of this section, or the possession of, or falsification of a record pertaining
23 to, the substances described in subdivision (a) of this section, in which event the
24 record of the conviction is conclusive evidence thereof . . .

25 6. Code section 2765 states:

26 A plea or verdict of guilty or a conviction following a plea of nolo
27 contendere made to a charge substantially related to the qualifications, functions and
28 duties of a registered nurse is deemed to be a conviction within the meaning of this
article. The board may order the license or certificate suspended or revoked, or may
decline to issue a license or certificate, when the time for appeal has elapsed, or the
judgment of conviction has been affirmed on appeal or when an order granting
probation is made suspending the imposition of sentence, irrespective of a subsequent
order under the provisions of Section 1203.4 of the Penal Code allowing such person
to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside
the verdict of guilty, or dismissing the accusation, information or indictment.

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1 7. Code section 480 states, in pertinent part:

2 (a) A board may deny a license regulated by this code on the grounds that
3 the applicant has one of the following:

4 (1) Been convicted of a crime. A conviction within the meaning of this
5 section means a plea or verdict of guilty or a conviction following a plea of nolo
6 contendere. Any action that a board is permitted to take following the establishment
7 of a conviction may be taken when the time for appeal has elapsed, or the judgment
8 of conviction has been affirmed on appeal, or when an order granting probation is
9 made suspending the imposition of sentence, irrespective of a subsequent order under
10 the provisions of Section 1203.4 of the Penal Code.

11 (3)(A) Done any act that if done by a licensee of the business or
12 profession in question, would be grounds for suspension or revocation of license.

13 (B) The board may deny a license pursuant to this subdivision only if the
14 crime or act is substantially related to the qualifications, functions, or duties of the
15 business or profession for which application is made . . .

16 **FIRST CAUSE FOR DENIAL**

17 **(Criminal Convictions)**

18 8. Respondent's application is subject to denial pursuant to Code sections 2736, 2761,
19 subdivision (f), and 480, subdivisions (a)(1) and (a)(3)(A), in that Respondent was convicted of
20 crimes which are substantially related to the qualifications, functions, and duties of a registered
21 nurse, as set forth below.

22 a. On or about August 1, 2001, in the criminal proceeding titled *People v. Breanna*
23 *Marie Lamance* (Super. Ct. Fresno County, 2001, Case No. CT01904072), Respondent pled
24 guilty to violating Vehicle Code section 23152, subdivision (b) (driving while having a blood
25 alcohol level of 0.08 percent or more), a misdemeanor. The imposition of Respondent's sentence
26 was suspended and Respondent was placed on probation for 36 months on terms and conditions.
27 The circumstances of the crime are as follows: On or about June 1, 2001, an officer with the
28 Fresno Police Department ("FPD") conducted a traffic stop on Respondent's vehicle because
Respondent was speeding. When the officer contacted Respondent, he observed that her eyes
were bloodshot and watery, and he could smell a moderate odor of alcohol coming from her
person. The officer had Respondent perform field sobriety tests, then placed her under arrest for
investigation of DUI (driving under the influence). Later, Respondent admitted to the officer that

1 she had consumed four "Bud Light beers". Another FPD officer found a small plastic bag
2 containing marijuana inside Respondent's vehicle. Respondent claimed that the marijuana
3 belonged to a co-worker and that her co-worker had given her the drug in exchange for a ride.
4 Respondent stated that she took the marijuana from her co-worker because she (Respondent)
5 smoked marijuana occasionally.

6 b. On or about April 2, 2002, in the criminal proceeding titled *People v. Breanna Marie*
7 *LaMance* (Super. Ct. Fresno County, 2002, Case No. CT02900466), Respondent pled nolo
8 contendere to violating Vehicle Code section 23103, subdivision (a) (alcohol-related reckless
9 driving), a misdemeanor. The imposition of Respondent's sentence was suspended and
10 Respondent was placed on probation for 36 months on terms and conditions. The circumstances
11 of the crime are as follows: On or about January 1, 2002, an officer with the FPD performed a
12 traffic stop on Respondent's vehicle. During the traffic stop, Respondent was observed to have
13 bloodshot/watery eyes and had a strong odor of alcohol on her breath. Respondent performed
14 field sobriety tests and underwent a PAS test (breathalyzer test). Respondent's test results showed
15 that she had a BAC (blood alcohol content/level) of 0.09 percent. It was also discovered that
16 Respondent was driving the vehicle while her driver's license was suspended. The above incident
17 occurred while Respondent was on probation for her conviction of August 1, 2001.

18 c. On or about November 23, 2004, in the criminal proceeding titled *People v. Breanna*
19 *Marie Lamance* (Super. Ct. Fresno County, 2004, Case No. CT04000652), Respondent pled
20 guilty to violating Vehicle Code section 23152, subdivision (b) (driving while having a blood
21 alcohol level of 0.08 percent or more), a misdemeanor. The imposition of Respondent's sentence
22 was suspended and Respondent was placed on probation for 36 months on terms and conditions.
23 The circumstances of the crime are as follows: On or about July 7, 2004, an officer with the
24 Clovis Police Department performed a traffic stop on Respondent's vehicle because Respondent
25 was speeding (the officer determined that Respondent was driving 50 to 53 miles per hour in a
26 posted 35 MPH speed zone). When the officer contacted Respondent, he observed that she had a
27 strong odor of an alcoholic beverage coming from her person, her eyes were bloodshot and
28 watery, her coordination was poor, her speech was mumbled, and she had obvious mood swings.

Respondent told the officer that her driver's license had been "taken away (suspended) in 2002 for a DUI." The officer had Respondent perform field sobriety tests, then placed her under arrest for driving while intoxicated. After Respondent was transported to the Clovis Police Department, she underwent a breath test. The test results showed that Respondent had a blood alcohol level of 0.16% to 0.15%. The above incident occurred while Respondent was on probation for her conviction of April 2, 2002.

SECOND CAUSE FOR DENIAL

(Use of Alcoholic Beverages to an Extent or in a Manner

Dangerous or Injurious to Oneself, Others, and the Public)

9. Respondent's application is subject to denial pursuant to Code sections 2736, 2761, subdivision (a), 2762, subdivision (b), and 480, subdivision (a)(3)(A), in that on or about June 1, 2001, January 1, 2002, and July 7, 2004, she used or consumed alcoholic beverages to an extent or in a manner dangerous or injurious to herself, others, and the public, as set forth in paragraph 8 above.

THIRD CAUSE FOR DENIAL

(Convictions Related to the Consumption of Alcoholic Beverages)

10. Respondent's application is subject to denial pursuant to Code sections 2736, 2761, subdivision (a), 2762, subdivision (c), and 480, subdivision (a)(3)(A), on the grounds of unprofessional conduct, in that on or about August 1, 2001, April 2, 2002, and November 23, 2004, she was convicted of criminal offenses involving the consumption of alcoholic beverages, as set forth in paragraph 8 above.

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PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board of Registered Nursing issue a decision:

1. Denying the application of Breanna Marie LaMance for a registered nurse license;
2. Taking such other and further action as deemed necessary and proper.

DATED:

February 21, 2012

Louise R. Bailey
LOUISE R. BAILEY, M.ED., RN
Interim Executive Officer
Board of Registered Nursing
State of California
Complainant

SA2011103699